DETAILED ACTION

Status of the Claims

Receipt is acknowledged of the Applicants' Appeal Brief filed on 01/15/10. Claims 1, 6-8, 10-11 and 26-27 are pending.

Examiner's Amendment

Authorization for this examiner's amendment to independent claims 1 and 27 was given in a telephone interview with Gary Lobel on 04/10/10.

Claim 1 (currently amended): A composition comprising [an oligosacchadde blend that comprises fructo--oligosaccharide (FOS)and galacto-oligosaccharide (GOS), wherein (a) the composition comprises from about 15 g to about 20 g of the oligosaccharidc blend;] a) about 15 g to about 20 g of a fructo-oligosaccharide (FOS) and galacto-oligosaccharide (GOS) blend per 100 mL of composition; (b) each of said oligofructose and oligogalactose are composed of chains with a degree of polymerization ranging from about 2 to about 7; (c) the weight ratio of FOS and GOS is from about 0.5 to about 20; and (d) the FOS and GOS are capable of synergistically promoting the growth of *Lactobacilli*, such that their combined prebiotic property is greater than the sum of their individual prebiotic properties.

Claim 27 (currently amended): A composition comprising glutamine and [an oligosaccharide blend that consists essentially of fructo-oligosaccharide (FOS) and galacto- oligosaccharide (GOS)] consisting essentially of about 15 g

to about 20 g of a fructo-oligosaccharide (FOS) and galacto-oligosaccharide (GOS) blend per 100 mL of composition, wherein each of said FOS and GOS contains up to 95% by weight of said oligofructose and said oligogalactose that are composed of chains with a degree of polymerization ranging from about 2 to about 7 and wherein the weight ratio of FOS and GOS is from about 0.5 to about 20 and wherein the FOS and GOS are capable of synergistically promoting the growth of *Lactobacilli*, such that their combined prebiotic property is greater than the sum of their individual prebiotic properties.

Response to Amendments and Remarks

Rejections-35 USC § 112nd enablement and 103 over US 6,399,124:

Independent claims 1 and 27 have been amended to claim a composition with a specific amount of the FOS/GOS blend about 15 g to about 20 g per 100 mL of composition and as such the rejections are now moot over these independent claims and all dependent claims thereon.

Reasons for allowance

The following is an examiner's statement of reasons for allowance:

The prior art of record does not teach or suggest a composition with the specific amount of the FOS/GOS blend about 15 g to about 20 g per 100 mL of composition, (b) each of said oligofructose and oligogalactose are composed of chains with a degree of polymerization ranging from about 2 to about 7; (c) the weight ratio of FOS and GOS is from about 0.5 to about 20; and (d) the FOS and

GOS are capable of synergistically promoting the growth of *Lactobacilli*, such that their combined prebiotic property is greater than the sum of their individual prebiotic properties.

Therefore the claims are allowable over the prior art of record.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Conclusion

Claims 1, 6-8, 10-11 and 26-27 are allowed.

Correspondence

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bethany P. Barham whose telephone number is 571-272-6175. The examiner can normally be reached on M-F from 8:30am to 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert A. Wax, can be reached on 571-272-0623. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Bethany Barham
Examiner, Art Unit 1615

/Robert A. Wax/
Supervisory Patent Examiner
Art Unit 1615